

HB2003S01 compared with HB2003

~~{deleted text}~~ shows text that was in HB2003 but was deleted in HB2003S01.

Inserted text shows text that was not in HB2003 but was inserted into HB2003S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Tim Quinn proposes the following substitute bill:

INCOME TAX CODE AMENDMENTS

2018 SECOND SPECIAL SESSION

STATE OF UTAH

Chief Sponsor: Steve Eliason

Senate Sponsor: Howard A. Stephenson

LONG TITLE

General Description:

This bill amends ~~{corporate franchise and }~~income tax provisions~~{ related to a Utah net loss}~~.

Highlighted Provisions:

This bill:

- ▶ prohibits a taxpayer from carrying a Utah net loss back to an earlier taxable year;
- ▶ limits the amount of Utah net loss that a taxpayer may carry forward;
- ▶ removes the 15-year time limit for a taxpayer to carry forward a Utah net loss;
- ▶ adds deferred foreign income to the definition of unadjusted income for corporate income tax purposes;
- ▶ modifies the payment schedule for a corporate taxpayer to pay the income tax on deferred foreign income;

HB2003S01 compared with HB2003

- ▶ modifies the calculation of the taxpayer tax credit to create a Utah personal exemption; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

This bill provides retrospective operation.

Utah Code Sections Affected:

AMENDS:

59-7-101, as last amended by Laws of Utah 2011, Chapter 69

59-7-110 (Effective 01/01/19), as last amended by Laws of Utah 2018, Chapter 456

59-7-110 (Superseded 01/01/19), as last amended by Laws of Utah 2016, Chapters 311 and 323

59-7-118, as enacted by Laws of Utah 2018, Chapter 405

59-7-522, as last amended by Laws of Utah 2015, First Special Session, Chapter 3

59-10-1018, as last amended by Laws of Utah 2018, Chapters 415 and 456

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **59-7-101** is amended to read:

59-7-101. Definitions.

As used in this chapter:

(1) "Adjusted income" means unadjusted income as modified by Sections 59-7-105 and 59-7-106.

(2) (a) "Affiliated group" means one or more chains of corporations that are connected through stock ownership with a common parent corporation that meet the following requirements:

(i) at least 80% of the stock of each of the corporations in the group, excluding the common parent corporation, is owned by one or more of the other corporations in the group; and

(ii) the common parent directly owns at least 80% of the stock of at least one of the

HB2003S01 compared with HB2003

corporations in the group.

(b) "Affiliated group" does not include corporations that are qualified to do business but are not otherwise doing business in this state.

(c) For purposes of this Subsection (2), "stock" does not include nonvoting stock which is limited and preferred as to dividends.

(3) "Apportionable income" means adjusted income less nonbusiness income net of related expenses, to the extent included in adjusted income.

(4) "Apportioned income" means apportionable income multiplied by the apportionment fraction as determined in Section 59-7-311.

(5) "Business income" [~~is as~~] means the same as that term is defined in Section 59-7-302.

(6) (a) "Captive real estate investment trust" means a real estate investment trust if:

(i) the shares or beneficial interests of the real estate investment trust are not regularly traded on an established securities market; and

(ii) more than 50% of the voting power or value of the shares or beneficial interests of the real estate investment trust are directly, indirectly, or constructively:

(A) owned by a controlling entity of the real estate investment trust; or

(B) controlled by a controlling entity of the real estate investment trust.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining "established securities market."

(7) (a) "Common ownership" means the direct or indirect control or ownership of more than 50% of the outstanding voting stock of:

(i) a parent-subsidiary controlled group as defined in Section 1563, Internal Revenue Code, except that 50% shall be substituted for 80%;

(ii) a brother-sister controlled group as defined in Section 1563, Internal Revenue Code; or

(iii) three or more corporations each of which is a member of a group of corporations described in Subsection (2)(a)(i) or (ii), and one of which is:

(A) a common parent corporation included in a group of corporations described in Subsection (2)(a)(i); and

(B) included in a group of corporations described in Subsection (2)(a)(ii).

HB2003S01 compared with HB2003

(b) Ownership of outstanding voting stock shall be determined by Section 1563, Internal Revenue Code.

(8) (a) "Controlling entity of a captive real estate investment trust" means an entity that:

(i) is treated as an association taxable as a corporation under the Internal Revenue Code;

(ii) is not exempt from federal income taxation under Section 501(a), Internal Revenue Code; and

(iii) directly, indirectly, or constructively holds more than 50% of:

(A) the voting power of a captive real estate investment trust; or

(B) the value of the shares or beneficial interests of a captive real estate investment trust.

(b) "Controlling entity of a captive real estate investment trust" does not include:

(i) a real estate investment trust, except for a captive real estate investment trust;

(ii) a qualified real estate investment subsidiary described in Section 856(i), Internal Revenue Code, except for a qualified real estate investment trust subsidiary of a captive real estate investment trust; or

(iii) a foreign real estate investment trust.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining "established securities market."

(9) "Corporate return" or "return" includes a combined report.

(10) "Corporation" includes:

(a) entities defined as corporations under Sections 7701(a) and 7704, Internal Revenue Code; and

(b) other organizations that are taxed as corporations for federal income tax purposes under the Internal Revenue Code.

(11) "Dividend" means any distribution, including money or other type of property, made by a corporation to its shareholders out of its earnings or profits accumulated after December 31, 1930.

(12) (a) "Doing business" includes any transaction in the course of its business by a domestic corporation, or by a foreign corporation qualified to do or doing intrastate business in

HB2003S01 compared with HB2003

this state.

(b) Except as provided in Subsection 59-7-102(3), "doing business" includes:

- (i) the right to do business through incorporation or qualification;
- (ii) the owning, renting, or leasing of real or personal property within this state; and
- (iii) the participation in joint ventures, working and operating agreements, the

performance of which takes place in this state.

(13) "Domestic corporation" means a corporation that is incorporated or organized under the laws of this state.

(14) (a) "Farmers' cooperative" means an association, corporation, or other organization that is:

(i) (A) an association, corporation, or other organization of ~~[-(F)]~~ farmers~~[:]~~ or ~~[(H)]~~ fruit growers; or

(B) an association, corporation, or other organization that is similar to an association, corporation, or organization described in Subsection (14)(a)(i)(A); and

(ii) organized and operated on a cooperative basis to:

(A) (I) market the products of members of the cooperative or the products of other producers; and

(II) return to the members of the cooperative or other producers the proceeds of sales less necessary marketing expenses on the basis of the quantity of the products of a member or producer or the value of the products of a member or producer; or

(B) (I) purchase supplies and equipment for the use of members of the cooperative or other persons; and

(II) turn over the supplies and equipment described in Subsection (14)(a)(ii)(B)(I) at actual costs plus necessary expenses to the members of the cooperative or other persons.

(b) (i) Subject to Subsection (14)(b)(ii), for purposes of this Subsection (14), the commission by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall define:

(A) the terms ~~[-(F)]~~ "member"~~[:]~~ and ~~[(H)]~~ "producer"; and

(B) what constitutes an association, corporation, or other organization that is similar to an association, corporation, or organization described in Subsection (14)(a)(i)(A).

(ii) The rules made under this Subsection (14)(b) shall be consistent with the filing

HB2003S01 compared with HB2003

requirements under federal law for a farmers' cooperative.

(15) "Foreign corporation" means a corporation that is not incorporated or organized under the laws of this state.

(16) (a) "Foreign operating company" means a corporation ~~[if]~~ that:

(i) ~~[the corporation]~~ is incorporated in the United States;

(ii) conducts at least 80% of the corporation's business activity, as determined under Section 59-7-401, ~~[is conducted]~~ outside the United States; and

(iii) as calculated in accordance with Part 3, Allocation and Apportionment of Income - Utah UDITPA Provisions, ~~[the corporation]~~ has:

(A) at least \$1,000,000 of payroll located outside the United States; and

(B) at least \$2,000,000 of property located outside the United States.

(b) "Foreign operating company" does not include a corporation that qualifies for the Puerto Rico and possession tax credit as provided in Section 936, Internal Revenue Code.

(17) (a) "Foreign real estate investment trust" means:

(i) a business entity organized outside the laws of the United States if:

(A) at least 75% of the business entity's total asset value at the close of the business entity's taxable year is represented by:

(I) real estate assets, as defined in Section 856(c)(5)(B), Internal Revenue Code;

(II) cash or cash equivalents; or

(III) one or more securities issued or guaranteed by the United States;

(B) the business entity is:

(I) not subject to income taxation:

(Aa) on amounts distributed to the business entity's beneficial owners; and

(Bb) in the jurisdiction in which the business entity is organized; or

(II) exempt from income taxation on an entity level in the jurisdiction in which the business entity is organized;

(C) the business entity distributes at least 85% of the business entity's taxable income, as computed in the jurisdiction in which the business entity is organized, to the holders of the business entity's:

(I) shares or beneficial interests; and

(II) on an annual basis;

HB2003S01 compared with HB2003

(D) (I) not more than 10% of the following is held directly, indirectly, or constructively by a single person:

(Aa) the voting power of the business entity; or

(Bb) the value of the shares or beneficial interests of the business entity; or

(II) the shares of the business entity are regularly traded on an established securities market; and

(E) the business entity is organized in a country that has a tax treaty with the United States; or

(ii) a listed Australian property trust.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining:

(i) "cash or cash equivalents";

(ii) "established securities market"; or

(iii) "listed Australian property trust."

(18) "Income" includes losses.

(19) "Internal Revenue Code" means Title 26 of the United States Code as effective during the year in which Utah taxable income is determined.

(20) "Nonbusiness income" [~~is as~~] means the same as that term is defined in Section 59-7-302.

(21) "Real estate investment trust" [~~is as~~] means the same as that term is defined in Section 856, Internal Revenue Code.

(22) "Related expenses" means:

(a) expenses directly attributable to nonbusiness income; and

(b) the portion of interest or other expense indirectly attributable to both nonbusiness and business income [~~which~~] that bears the same ratio to the aggregate amount of such interest or other expense, determined without regard to this Subsection (22), as the average amount of the asset producing the nonbusiness income bears to the average amount of all assets of the taxpayer within the taxable year.

~~(24)~~ (23) "S corporation" means an S corporation as defined in Section 1361, Internal Revenue Code.

~~(23)~~ (24) "Safe harbor lease" means a lease that qualified as a safe harbor lease under

HB2003S01 compared with HB2003

Section 168, Internal Revenue Code.

(25) "State of the United States" includes any of the 50 states or the District of Columbia.

(26) (a) "Taxable year" means the calendar year or the fiscal year ending during such calendar year upon the basis of which the adjusted income is computed.

(b) In the case of a return made for a fractional part of a year under this chapter or under rules prescribed by the commission, "taxable year" includes the period for which such return is made.

(27) "Taxpayer" means any corporation subject to the tax imposed by this chapter.

(28) "Threshold level of business activity" means business activity in the United States equal to or greater than 20% of the corporation's total business activity as determined under Section 59-7-401.

(29) (a) "Unadjusted income" means federal taxable income as determined on a separate return basis before intercompany eliminations as determined by the Internal Revenue Code, before the net operating loss deduction and special deductions for dividends received.

(b) For the last taxable year of a taxpayer beginning on or before December 31, 2017, "unadjusted income" includes deferred foreign income described in Section 965(a), Internal Revenue Code.

(30) (a) "Unitary group" means a group of corporations that:

(i) are related through common ownership; and

(ii) by a preponderance of the evidence as determined by a court of competent jurisdiction or the commission, are economically interdependent with one another as demonstrated by the following factors:

(A) centralized management;

(B) functional integration; and

(C) economies of scale.

(b) "Unitary group" includes a captive real estate investment trust.

(c) "Unitary group" does not include an S corporation.

(31) "United States" includes the 50 states and the District of Columbia.

(32) "Utah net loss" means the current year Utah taxable income before Utah net loss deduction, if determined to be less than zero.

HB2003S01 compared with HB2003

(33) (a) For a taxable year beginning on or before December 31, 2017, "Utah net loss deduction" means the amount of Utah net losses from other taxable years that [may be carried back or carried] a taxpayer may carry back or carry forward to the current taxable year in accordance with Section 59-7-110.

(b) For a taxable year beginning on or after January 1, 2018, "Utah net loss deduction" means the amount of Utah net losses from other taxable years that a taxpayer may carry forward to the current taxable year in accordance with Section 59-7-110.

(34) (a) "Utah taxable income" means Utah taxable income before net loss deduction less Utah net loss deduction.

(b) "Utah taxable income" includes income from tangible or intangible property located or having situs in this state, regardless of whether carried on in intrastate, interstate, or foreign commerce.

(35) "Utah taxable income before net loss deduction" means apportioned income plus nonbusiness income allocable to Utah net of related expenses.

(36) (a) "Water's edge combined report" means a report combining the income and activities of:

(i) all members of a unitary group that are:

(A) corporations organized or incorporated in the United States, including those corporations qualifying for the Puerto Rico and Possession Tax Credit as provided in Section 936, Internal Revenue Code, in accordance with Subsection (36)(b); and

(B) corporations organized or incorporated outside of the United States meeting the threshold level of business activity; and

(ii) an affiliated group electing to file a water's edge combined report under Subsection 59-7-402(2).

(b) There is a rebuttable presumption that a corporation which qualifies for the Puerto Rico and possession tax credit provided in Section 936, Internal Revenue Code, is part of a unitary group.

(37) "Worldwide combined report" means the combination of the income and activities of all members of a unitary group irrespective of the country in which the corporations are incorporated or conduct business activity.

~~{ 59-7-118. Section 965, Internal Revenue Code -- Installment payments.~~

HB2003S01 compared with HB2003

~~———— (1) Subject to the other provisions of this section, a corporation may pay in installments the tax owed under this chapter on deferred foreign income described in Section 965, Internal Revenue Code.~~

~~———— (2) Subsection (1) applies:~~

~~———— (a) to a corporation that:~~

~~———— (i) is authorized to make an election under Section 965(h), Internal Revenue Code; and~~

~~———— (ii) apportions deferred foreign income described in Section 965, Internal Revenue Code, to this state; and~~

~~———— (b) for a tax year in which a corporation makes an election under Section 965(h), Internal Revenue Code, for purposes of the corporation's federal income tax.~~

~~———— (3) The same provisions that apply to an election made under Section 965(h), Internal Revenue Code, for federal purposes apply to an installment payment made under this section.~~

~~———— **59-10-1018. Definitions -- Nonrefundable taxpayer tax credits.**~~

~~———— (1) As used in this section:~~

~~———— (a) "Dependent adult with a disability" means an individual who:~~

~~———— (i) a claimant claims as a dependent under Section 151, Internal Revenue Code, on the claimant's federal individual income tax return for the taxable year;~~

~~———— (ii) is not the claimant or the claimant's spouse; and~~

~~———— (iii) is:~~

~~———— (A) 18 years of age or older;~~

~~———— (B) eligible for services under Title 62A, Chapter 5, Services for People with Disabilities; and~~

~~———— (C) not enrolled in an education program for students with disabilities that is authorized under Section 53E-7-202.~~

~~———— (b) "Dependent child with a disability" means an individual 21 years of age or younger who:~~

~~———— (i) a claimant claims as a dependent under Section 151, Internal Revenue Code, on the claimant's federal individual income tax return for the taxable year;~~

~~———— (ii) is not the claimant or the claimant's spouse; and~~

~~———— (iii) is:~~

~~———— (A) an eligible student with a disability; or~~

HB2003S01 compared with HB2003

~~—— (B) identified under guidelines of the Department of Health as qualified for Early Intervention or Infant Development Services;~~

~~—— (c) "Eligible student with a disability" means an individual who is:~~

~~—— (i) diagnosed by a school district representative under rules the State Board of Education adopts in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as having a disability classified as autism, deafness, preschool developmental delay, dual sensory impairment, hearing impairment, intellectual disability, multidisability, orthopedic impairment, other health impairment, traumatic brain injury, or visual impairment;~~

~~—— (ii) not receiving residential services from the Division of Services for People with Disabilities created under Section 62A-5-102 or a school established under Title 53E, Chapter 8, Utah Schools for the Deaf and the Blind; and~~

~~—— (iii) (A) enrolled in an education program for students with disabilities that is authorized under Section 53E-7-202; or~~

~~—— (B) a recipient of a scholarship awarded under Title 53F, Chapter 4, Part 3, Carson Smith Scholarship Program.~~

~~—— (d) "Head of household filing status" means a head of household, as defined in Section 2(b), Internal Revenue Code, who files a single federal individual income tax return for the taxable year:~~

~~—— (e) "Joint filing status" means:~~

~~—— (i) spouses who file a single return jointly under this chapter for a taxable year; or~~

~~—— (ii) a surviving spouse, as defined in Section 2(a), Internal Revenue Code, who files a single federal individual income tax return for the taxable year.~~

~~—— (f) "Single filing status" means:~~

~~—— (i) a single individual who files a single federal individual income tax return for the taxable year; or~~

~~—— (ii) a married individual who:~~

~~—— (A) does not file a single federal individual income tax return jointly with that married individual's spouse for the taxable year; and~~

~~—— (B) files a single federal individual income tax return for the taxable year.~~

~~—— (g) "State or local income tax" means the lesser of:~~

~~—— (i) the amount of state or local income tax that the claimant:~~

HB2003S01 compared with HB2003

~~—— (A) pays for the taxable year; and~~

~~—— (B) reports on the claimant's federal individual income tax return for the taxable year; regardless of whether the claimant is allowed an itemized deduction on the claimant's federal individual income tax return for the taxable year for the full amount of state or local income tax paid; and~~

~~—— (ii) \$10,000.~~

~~—— (h) (i) "Utah itemized deduction" means the amount the claimant deducts as allowed as an itemized deduction on the claimant's federal individual income tax return for that taxable year minus any amount of state or local income tax for the taxable year.~~

~~—— (ii) "Utah itemized deduction" does not include any amount of qualified business income that the claimant subtracts as allowed by Section 199A, Internal Revenue Code, on the claimant's federal income tax return for that taxable year.~~

~~—— (2) Except as provided in Section 59-10-1002.2, and subject to Subsections (3) through (5), a claimant may claim a nonrefundable tax credit against taxes otherwise due under this part equal to the sum of:~~

~~—— (a) (i) for a claimant that deducts the standard deduction on the claimant's federal individual income tax return for the taxable year, 6% of the amount the claimant deducts as allowed as the standard deduction on the claimant's federal individual income tax return for that taxable year; or~~

~~—— (ii) for a claimant that itemizes deductions on the claimant's federal individual income tax return for the taxable year, 6% of the amount of the claimant's Utah itemized deduction; and~~

~~—— (b) the product of:~~

~~—— (i) 75% of the total amount the claimant deducts as allowed as a personal exemption deduction on the claimant's federal individual income tax return for that taxable year, plus an additional 75% of the amount the claimant deducts as allowed as a personal exemption deduction on the claimant's federal individual income tax return for that taxable year with respect to each dependent adult with a disability or dependent child with a disability; and~~

~~—— (ii) 6%.~~

~~—— (3) A claimant may not carry forward or carry back a tax credit under this section.~~

~~—— (4) The tax credit allowed by Subsection (2) shall be reduced by \$.013 for each dollar~~

HB2003S01 compared with HB2003

by which a claimant's state taxable income exceeds:

~~— (a) for a claimant who has a single filing status, \$12,000;~~

~~— (b) for a claimant who has a head of household filing status, \$18,000; or~~

~~— (c) for a claimant who has a joint filing status, \$24,000.~~

~~— (5) (a) For a taxable year beginning on or after January 1, 2009, the commission shall increase or decrease annually the following dollar amounts by a percentage equal to the percentage difference between the consumer price index for the preceding calendar year and the consumer price index for calendar year 2007:~~

~~— (i) the dollar amount listed in Subsection (4)(a); and~~

~~— (ii) the dollar amount listed in Subsection (4)(b).~~

~~— (b) After the commission increases or decreases the dollar amounts listed in Subsection (5)(a), the commission shall round those dollar amounts listed in Subsection (5)(a) to the nearest whole dollar.~~

~~— (c) After the commission rounds the dollar amounts as required by Subsection (5)(b), the commission shall increase or decrease the dollar amount listed in Subsection (4)(c) so that the dollar amount listed in Subsection (4)(c) is equal to the product of:~~

~~— (i) the dollar amount listed in Subsection (4)(a); and~~

~~— (ii) two.~~

~~— (d) For purposes of Subsection (5)(a), the commission shall calculate the consumer price index as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.~~

‡ Section 2. Section **59-7-110 (Superseded 01/01/19)** is amended to read:

59-7-110 (Superseded 01/01/19). Utah net loss -- Carryforward and carryback --

Deduction.

(1) ~~[The amount of Utah net loss that shall be carried back or]~~ A taxpayer shall determine the amount of Utah net loss that the taxpayer may carry forward to offset income of another taxable year [is determined] as provided in this section.

~~[(2)(a) Subject to the other provisions of this section, a Utah net loss from a taxable year beginning before January 1, 1994, shall be carried back three taxable years preceding the taxable year of the loss and any remaining loss shall be carried forward five taxable years following the taxable year of the loss.]~~

~~[(b)(i) Subject to the other provisions of this section, a Utah net loss from a taxable~~

HB2003S01 compared with HB2003

~~year beginning on or after January 1, 1994, may be carried back three taxable years preceding the taxable year of the loss and carried forward 15 taxable years following the taxable year of the loss.]~~

~~[(ii) If an election is made to forego the federal net operating loss carryback, a Utah net loss is not eligible to be carried back unless an election is made for state purposes.]~~

(2) Subject to the other provisions of this section, a taxpayer:

(a) may carry forward a Utah net loss from a taxable year to a future taxable year; and

(b) may not carry back a Utah net loss from a taxable year.

(3) A taxpayer that carries forward a Utah net loss shall carry forward the Utah net loss ~~[shall be carried]~~ to the earliest eligible year for which the Utah taxable income before net loss deduction, minus Utah net losses from previous years ~~[that were applied or required to be applied]~~ that a taxpayer applied or was required to apply to offset income, is not less than zero.

(4) (a) [Except as provided in] Subject to Subsection (4)(b), the amount of Utah net loss that ~~[shall be carried]~~ a taxpayer may carry to the year identified in Subsection (3) is the lesser of:

(i) the remaining Utah net loss after deduction of any amounts of the Utah net loss that ~~[were]~~ a taxpayer carried to previous years; or

(ii) the remaining Utah taxable income before net loss deduction of the year identified in Subsection (3) after deduction of Utah net losses from previous years ~~[that were carried or required to be carried]~~ that a taxpayer carried or was required to carry to the year identified in Subsection (3).

~~[(b) (i) The amount of Utah net loss carried back from a taxable year may not exceed \$1,000,000 in Utah taxable income for each return filed under this chapter in a taxable year.]~~

~~[(ii) A Utah net loss in excess of \$1,000,000 may be carried forward.]~~

(b) (i) The amount of Utah net loss that a taxpayer may carry forward to a taxable year may not exceed 80% of Utah taxable income computed without regard to the deduction allowable under this section.

~~[(iii) (ii) A taxpayer may carry a remaining Utah net loss~~ ~~[shall be available to be carried]~~ (ii) A taxpayer may carry a remaining Utah net loss to one or more taxable years in accordance with this section.

(5) (a) (i) Subject to Subsection (5)(a)(ii), a corporation acquiring the assets or stock of another corporation may not deduct any net loss incurred by the acquired corporation prior to

HB2003S01 compared with HB2003

the date of acquisition.

(ii) Subsection (5)(a)(i) does not apply if the only change in the corporation is that of the state of incorporation.

(b) An acquired corporation may deduct the acquired corporation's net losses incurred before the date of acquisition against the acquired corporation's separate income as calculated under Subsections (6) and (7) if the acquired corporation has continued to carry on a trade or business substantially the same as that conducted before the acquisition.

(6) For purposes of Subsection (5)(b), the amount of net loss an acquired corporation that is acquired by a unitary group may deduct is calculated by:

(a) subject to Subsection (7):

(i) except as provided in Subsection (6)(a)(ii), calculating the sum of:

(A) an amount determined by dividing the average value of the acquired corporation's real and tangible personal property owned or rented and used in this state during the taxable year by the average value of all of the unitary group's real and tangible personal property owned or rented and used during the taxable year;

(B) an amount determined by dividing the total amount paid in this state during the taxable year by the acquired corporation for compensation by the total compensation paid everywhere by the unitary group during the taxable year; and

(C) an amount determined by:

(I) dividing the total sales of the acquired corporation in this state during the taxable year by the total sales of the unitary group everywhere during the taxable year; and

(II) if the unitary group elects to calculate the fraction for apportioning business income to this state using the method described in Subsection 59-7-311(2)(b), multiplying the amount calculated under Subsection (6)(a)(i)(C)(I) by two; or

(ii) if the unitary group is required or elects to calculate the fraction for apportioning business income to this state using the method described in Subsection 59-7-311(3), calculating an amount determined by dividing the total sales of the acquired corporation in this state during the taxable year by the total sales of the unitary group everywhere during the taxable year;

(b) dividing the amount calculated under Subsection (6)(a) by the same denominator of the fraction the unitary group uses to apportion business income to this state:

(i) for that taxable year; and

HB2003S01 compared with HB2003

(ii) in accordance with Section 59-7-311;

(c) multiplying the amount calculated under Subsection (6)(b) by the business income of the unitary group for the taxable year that is subject to apportionment under Section 59-7-311; and

(d) calculating the sum of:

(i) the amount calculated under Subsection (6)(c); and

(ii) the following amounts allocable to the acquired corporation for the taxable year:

(A) nonbusiness income allocable to this state; or

(B) nonbusiness loss allocable to this state.

(7) The amounts calculated under Subsection (6)(a) shall be derived in the same manner as those amounts are derived for purposes of apportioning the unitary group's business income before deducting the net loss, including a modification made in accordance with Section 59-7-320.

Section 3. Section **59-7-110 (Effective 01/01/19)** is amended to read:

59-7-110 (Effective 01/01/19). Utah net loss -- Carryforward and carryback --

Deduction.

(1) A taxpayer shall determine the amount of Utah net loss that the taxpayer may carry [~~back or~~] forward to offset income of another taxable year as provided in this section.

(2) [~~(a)~~] Subject to the other provisions of this section, a taxpayer [~~may~~]:

[~~(i) carry back a Utah net loss from a taxable year for three taxable years preceding the taxable year of the loss; and~~]

[~~(ii) (a) may carry forward a Utah net loss from a taxable year [for 15 taxable years following the taxable year of the loss.] to a future taxable year; and~~]

[~~(b) If a taxpayer elects to forego the federal net operating loss carryback, the taxpayer may not carry back a Utah net loss unless the taxpayer makes an election for state purposes.~~]

(b) may not carry back a Utah net loss from a taxable year.

(3) A taxpayer that carries forward a Utah net loss shall carry forward the Utah net loss to the earliest eligible year for which the Utah taxable income before net loss deduction, minus Utah net losses from previous years that a taxpayer applied or was required to apply to offset income, is not less than zero.

(4) (a) [~~Except as provided in~~] Subject to Subsection (4)(b), the amount of Utah net

HB2003S01 compared with HB2003

loss that a taxpayer may carry to the year identified in Subsection (3) is the lesser of:

(i) the remaining Utah net loss after deduction of any amounts of the Utah net loss that a taxpayer carried to previous years; or

(ii) the remaining Utah taxable income before net loss deduction of the year identified in Subsection (3) after deduction of Utah net losses from previous years that a taxpayer carried or was required to carry to the year identified in Subsection (3).

~~[(b)(i) The amount of Utah net loss that a taxpayer carries back from a taxable year may not exceed \$1,000,000 in Utah taxable income for each return filed under this chapter in a taxable year.]~~

~~[(ii) A taxpayer may carry forward a Utah net loss in excess of \$1,000,000.]~~

(b) (i) The amount of Utah net loss that a taxpayer may carry forward to a taxable year may not exceed 80% of Utah taxable income computed without regard to the deduction allowable under this section.

~~[(iii)]~~ (ii) A taxpayer may carry a remaining Utah net loss to one or more taxable years in accordance with this section.

(5) (a) (i) Subject to Subsection (5)(a)(ii), a corporation acquiring the assets or stock of another corporation may not deduct any net loss incurred by the acquired corporation prior to the date of acquisition.

(ii) Subsection (5)(a)(i) does not apply if the only change in the corporation is that of the state of incorporation.

(b) An acquired corporation may deduct the acquired corporation's net losses incurred before the date of acquisition against the acquired corporation's separate income as calculated under Subsections (6) and (7) if the acquired corporation has continued to carry on a trade or business substantially the same as that conducted before the acquisition.

(6) For purposes of Subsection (5)(b), the amount of net loss an acquired corporation that is acquired by a unitary group may deduct is calculated by:

(a) subject to Subsection (7):

(i) except as provided in Subsection (6)(a)(ii), calculating the sum of:

(A) an amount determined by dividing the average value of the acquired corporation's real and tangible personal property owned or rented and used in this state during the taxable year by the average value of all of the unitary group's real and tangible personal property owned

HB2003S01 compared with HB2003

or rented and used during the taxable year;

(B) an amount determined by dividing the total amount paid in this state during the taxable year by the acquired corporation for compensation by the total compensation paid everywhere by the unitary group during the taxable year; and

(C) an amount determined by:

(I) dividing the total sales of the acquired corporation in this state during the taxable year by the total sales of the unitary group everywhere during the taxable year; and

(II) if the unitary group elects or is required to calculate the fraction for apportioning business income to this state using the method described in Subsection 59-7-311(4) in taxable year 2019 or taxable year 2020, multiplying the amount calculated under Subsection (6)(a)(i)(C)(I) by, for the taxable year 2019, four, or, for the taxable year 2020, eight; or

(ii) if the unitary group is required or elects to calculate the fraction for apportioning business income to this state using the method described in Subsection 59-7-311(2), calculating an amount determined by dividing the total sales of the acquired corporation in this state during the taxable year by the total sales of the unitary group everywhere during the taxable year;

(b) dividing the amount calculated under Subsection (6)(a) by the same denominator of the fraction the unitary group uses to apportion business income to this state for that taxable year in accordance with Section 59-7-311;

(c) multiplying the amount calculated under Subsection (6)(b) by the business income of the unitary group for the taxable year that is subject to apportionment under Section 59-7-311; and

(d) calculating the sum of:

(i) the amount calculated under Subsection (6)(c); and

(ii) the following amounts allocable to the acquired corporation for the taxable year:

(A) nonbusiness income allocable to this state; or

(B) nonbusiness loss allocable to this state.

(7) The amounts calculated under Subsection (6)(a) shall be derived in the same manner as those amounts are derived for purposes of apportioning the unitary group's business income before deducting the net loss, including a modification made in accordance with Section 59-7-320.

Section 4. Section ~~{59-7-522}~~59-7-118 is amended to read:

HB2003S01 compared with HB2003

59-7-118. Section 965, Internal Revenue Code -- Installment payments.

(1) Subject to the other provisions of this section, a corporation may pay in installments the tax owed under this chapter on deferred foreign income described in Section 965, Internal Revenue Code.

(2) Subsection (1) applies:

(a) to a corporation that:

(i) is authorized to make an election under Section 965(h), Internal Revenue Code; and

(ii) apportions deferred foreign income described in Section 965, Internal Revenue Code, to this state; and

(b) for a tax year in which a corporation makes an election under Section 965(h), Internal Revenue Code, for purposes of the corporation's federal income tax.

(3) [The] (a) Except as provided in Subsection (3)(b), the same provisions that apply to an election made under Section 965(h), Internal Revenue Code, for federal purposes apply to an installment payment made under this section.

(b) A corporation shall make:

(i) the first installment under this section on or before the due date, including any extension, of the 2017 tax return filed under this chapter; and

(ii) a subsequent installment on or before the due date, including any extension, of the tax return filed under this chapter in each of the following seven years.

Section 5. Section 59-7-522 is amended to read:

59-7-522. Overpayments.

(1) As used in this section, "overpayment" means the same as that term is defined in Section 59-1-1409.

(2) (a) Subject to Subsection (2)(b), a claim for credit or refund of an overpayment that is attributable to a Utah net loss [~~carry back or~~] carry forward shall be filed within three years from the due date of the return for the taxable year of the Utah net loss.

(b) The three-year period described in Subsection (2)(a) shall be extended by any extension of time provided in statute for filing the return described in Subsection (2)(a).

(3) The commission shall make a credit against or refund of any overpayment of a tax under this chapter for a taxable year if, in accordance with Section 59-7-519:

(a) (i) a corporation agrees with the commissioner of internal revenue for an extension,

HB2003S01 compared with HB2003

or a renewal of an extension, of the period for proposing and assessing a deficiency in federal income tax for that taxable year; or

(ii) there is a change in or correction of federal taxable income for that taxable year;

and

(b) the corporation files a claim for the credit or refund before the expiration of the time period within which the commission may assess a deficiency.

(4) The commission shall make a credit or refund within a 30-day period after the day on which a court's decision to require the commission to credit or refund the amount of an overpayment to a taxpayer is final.

Section ~~5~~6. Section 59-10-1018 is amended to read:

59-10-1018. Definitions -- Nonrefundable taxpayer tax credits.

(1) As used in this section:

[(a) "Dependent adult with a disability" means an individual who:]

[(i) a claimant claims as a dependent under Section 151, Internal Revenue Code, on the claimant's federal individual income tax return for the taxable year;]

[(ii) is not the claimant or the claimant's spouse; and]

[(iii) is:]

[(A) 18 years of age or older;]

[(B) eligible for services under Title 62A, Chapter 5, Services for People with Disabilities; and]

[(C) not enrolled in an education program for students with disabilities that is authorized under Section 53E-7-202.]

[(b) "Dependent child with a disability" means an individual 21 years of age or younger who:]

[(i) a claimant claims as a dependent under Section 151, Internal Revenue Code, on the claimant's federal individual income tax return for the taxable year;]

[(ii) is not the claimant or the claimant's spouse; and]

[(iii) is:]

[(A) an eligible student with a disability; or]

[(B) identified under guidelines of the Department of Health as qualified for Early Intervention or Infant Development Services.]

HB2003S01 compared with HB2003

[(c) "Eligible student with a disability" means an individual who is:]

[(i) diagnosed by a school district representative under rules the State Board of Education adopts in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as having a disability classified as autism, deafness, preschool developmental delay, dual sensory impairment, hearing impairment, intellectual disability, multidisability, orthopedic impairment, other health impairment, traumatic brain injury, or visual impairment;]

[(ii) not receiving residential services from the Division of Services for People with Disabilities created under Section 62A-5-102 or a school established under Title 53E, Chapter 8, Utah Schools for the Deaf and the Blind; and]

[(iii) (A) enrolled in an education program for students with disabilities that is authorized under Section 53E-7-202; or]

[(B) a recipient of a scholarship awarded under Title 53F, Chapter 4, Part 3, Carson Smith Scholarship Program.]

[(d)] (a) "Head of household filing status" means a head of household, as defined in Section 2(b), Internal Revenue Code, who files a single federal individual income tax return for the taxable year.

[(e)] (b) "Joint filing status" means:

(i) spouses who file a single return jointly under this chapter for a taxable year; or

(ii) a surviving spouse, as defined in Section 2(a), Internal Revenue Code, who files a single federal individual income tax return for the taxable year.

(c) "Qualifying dependent" means an individual with respect to whom the claimant is allowed to claim a tax credit under Section 24, Internal Revenue Code, on the claimant's federal individual income tax return for the taxable year.

[(f)] (d) "Single filing status" means:

(i) a single individual who files a single federal individual income tax return for the taxable year; or

(ii) a married individual who:

(A) does not file a single federal individual income tax return jointly with that married individual's spouse for the taxable year; and

(B) files a single federal individual income tax return for the taxable year.

[(g)] (e) "State or local income tax" means the lesser of:

HB2003S01 compared with HB2003

(i) the amount of state or local income tax that the claimant:

(A) pays for the taxable year; and

(B) reports on the claimant's federal individual income tax return for the taxable year, regardless of whether the claimant is allowed an itemized deduction on the claimant's federal individual income tax return for the taxable year for the full amount of state or local income tax paid; and

(ii) \$10,000.

[~~(h)~~] (f) (i) "Utah itemized deduction" means the amount the claimant deducts as allowed as an itemized deduction on the claimant's federal individual income tax return for that taxable year minus any amount of state or local income tax for the taxable year.

[~~(ii)~~] (g) "Utah itemized deduction" does not include any amount of qualified business income that the claimant subtracts as allowed by Section 199A, Internal Revenue Code, on the claimant's federal income tax return for that taxable year.

(h) "Utah personal exemption" means, subject to Subsection (6), \$565 multiplied by the number of the claimant's qualifying dependents.

(2) Except as provided in Section 59-10-1002.2, and subject to Subsections (3) through (5), a claimant may claim a nonrefundable tax credit against taxes otherwise due under this part equal to the sum of:

(a) (i) for a claimant that deducts the standard deduction on the claimant's federal individual income tax return for the taxable year, 6% of the amount the claimant deducts as allowed as the standard deduction on the claimant's federal individual income tax return for that taxable year; or

(ii) for a claimant that itemizes deductions on the claimant's federal individual income tax return for the taxable year, 6% of the amount of the claimant's Utah itemized deduction; and

(b) [~~the product of;~~] 6% of the claimant's Utah personal exemption.

[~~(i) 75% of the total amount the claimant deducts as allowed as a personal exemption deduction on the claimant's federal individual income tax return for that taxable year, plus an additional 75% of the amount the claimant deducts as allowed as a personal exemption deduction on the claimant's federal individual income tax return for that taxable year with respect to each dependent adult with a disability or dependent child with a disability; and]~~

HB2003S01 compared with HB2003

~~[(ii) 6%.]~~

(3) A claimant may not carry forward or carry back a tax credit under this section.

(4) The tax credit allowed by Subsection (2) shall be reduced by \$.013 for each dollar by which a claimant's state taxable income exceeds:

(a) for a claimant who has a single filing status, \$12,000;

(b) for a claimant who has a head of household filing status, \$18,000; or

(c) for a claimant who has a joint filing status, \$24,000.

(5) (a) For a taxable year beginning on or after January 1, 2009, the commission shall increase or decrease annually the following dollar amounts by a percentage equal to the percentage difference between the consumer price index for the preceding calendar year and the consumer price index for calendar year 2007:

(i) the dollar amount listed in Subsection (4)(a); and

(ii) the dollar amount listed in Subsection (4)(b).

(b) After the commission increases or decreases the dollar amounts listed in Subsection (5)(a), the commission shall round those dollar amounts listed in Subsection (5)(a) to the nearest whole dollar.

(c) After the commission rounds the dollar amounts as required by Subsection (5)(b), the commission shall increase or decrease the dollar amount listed in Subsection (4)(c) so that the dollar amount listed in Subsection (4)(c) is equal to the product of:

(i) the dollar amount listed in Subsection (4)(a); and

(ii) two.

(d) For purposes of Subsection (5)(a), the commission shall calculate the consumer price index as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.

(6) (a) For a taxable year beginning on or after January 1, 2019, the commission shall increase annually the Utah personal exemption amount listed in Subsection (1)(h) by a percentage equal to the percentage by which the consumer price index for the preceding calendar year exceeds the consumer price index for calendar year 2017.

(b) After the commission increases the Utah personal exemption amount as described in Subsection (6)(a), the commission shall round the Utah personal exemption amount to the nearest whole dollar.

(c) For purposes of Subsection (6)(a), the commission shall calculate the consumer

HB2003S01 compared with HB2003

price index as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.

(7) A claimant may not claim a Utah personal exemption unless the claimant provides the social security number for each qualifying dependent that the claimant includes in the Utah personal exemption calculation.

Section 7. Effective date.

(1) Except as provided in Subsection (2), if approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

(2) The amendments to Section 59-7-110 (Effective 01/01/19) take effect on January 1, 2019.

Section ~~{6}~~8. **Retrospective operation.**

~~{This bill has}~~ (1) Except as provided in Subsections (2) and (3), this bill has retrospective operation for the last taxable year of a taxpayer beginning on or before December 31, 2017.

(2) The amendments to Section 59-7-118 have retrospective operation for a taxable year beginning on or after January 1, ~~{2018}~~2017.

(3) The amendments to Sections 59-7-110 (Superseded 01/01/19), 59-7-522, and 59-10-1018 have retrospective operation for a taxable year beginning on or after January 1, 2018.